

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE **April 13, 2004**

AGENDA ITEM NO.: 14

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Sewer Ordinance Change to Increase Penalties**

RECOMMENDATION: Approve an amendment, effective immediately, to the attached sewer use ordinance, Chapter 34-77 Art III, (d) *Enforcement, Pretreatment of Industrial and Nondomestic Wastes*.

SUMMARY:

Based on *Virginia code: 9VAC25-31-800. Pretreatment program requirements:...*Section(f). *Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by industrial users of pretreatment standards and requirements.*

Current SUO language states "any user who fails to comply.....shall be fined.....not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense... (on a per day basis)"

On this basis, the City is required to amend the current SUO to state "a minimum of \$1,000 per day per violation". The City may further amend a "not to exceed" maximum penalty of "\$2,500 per day per violation". The proposed SUO amendment is attached.

PRIOR ACTION(S): Finance Committee Meeting April 6, 2004
Physical Development Committee Meeting April 6, 2004

FISCAL IMPACT: No historical impacts. Future violations will be based on severity and/ or damages to infrastructure / treatment plant processes and only when authorized by civil court.

CONTACTS:

Dan Sneed, Director of Utilities	455-4257
Tim Mitchell, Asst. Dir. Of Utilities	455-4252
Bruce McNabb, Director of Public Works	455-3946

ATTACHMENT(S):

1. Amended City Code Chapter 34-77 Sewers Art. III, Pretreatment of Industrial and Nondomestic Wastes (d) *Civil Penalties*

REVIEWED BY: lkp

AN ORDINANCE TO AMEND AND REENACT SECTION 34-77 OF THE CODE OF THE CITY OF LYNCHBURG, 1980, AS AMENDED, THE AMENDED SECTION RELATING TO ENFORCEMENT, PRETREATMENT OF INDUSTRIAL AND NONDOMESTIC WASTES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 34-77 of the Code of the City of Lynchburg, 1980, as amended, be and the same is hereby amended and reenacted as follows:

Sec. 34-77. Enforcement.

The city shall utilize, notice of violations, consent orders, administrative actions, or other actions as defined in this section, or in the non domestic and industrial user regulations and practices Section XV, in order to provide compliance with this ordinance. These actions may include the imposition of voluntary penalties.

In addition to enforcement actions defined in the utilities non domestic and industrial user regulation and practices Section XV, the following actions are authorized by this ordinance:

(a) Suspension of water and/or wastewater service and/or wastewater discharge permit. The city may suspend water and/or wastewater treatment services or a wastewater discharge permit.

(1) When determined by the city, an actual or threatened discharge presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the wastewater treatment facilities, or causes the city to violate any condition of its VADES permit.

(2) A state or federal agency informs the city that the effluent from the wastewater treatment plant is no longer of a quality permitted for discharge into state waters, and it is found that the customer is delivering wastewater to the city's wastewater facilities that cannot be sufficiently treated or requires treatment that is not provided by the city as normal domestic treatment.

(3) The customer:

- a. discharges industrial waste or wastewater exceeding the limit established by the city; or
- b. discharges at an uncontrolled, variable rate or in sufficient quantity to cause an interference or pass through in the wastewater facilities;
- c. fails to pay monthly bills for water, sanitary sewer services, any sewer service charge, or surcharge when due;
- d. allows wastewater to continue to flow onto neighboring property.

(4) Any person notified of a suspension of the wastewater treatment service and/or the wastewater discharge permit shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary, including immediate severance of the sewer connection, or city water supply, to prevent or minimize damage to the wastewater treatment facilities or endangerment to any individuals. The city shall reinstate the wastewater discharge permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the city within fifteen (15) days of the date of occurrence.

(b) Revocation of wastewater discharge permit. Any user who violates the following conditions of this section, or applicable state and federal regulations, is subject to having their wastewater discharge permit revoked in accordance with Section XI of the non domestic and industrial user regulations and practices:

- (1) failure of a user to factually report the wastewater constituents and characteristics of their discharge;
- (2) failure of the user to report significant changes in operations or wastewater constituents and characteristics;
- (3) refusal of reasonable access to user's premises for the purpose of inspection or monitoring; or
- (4) violation of conditions of the wastewater discharge permit.

(c) Legal action.

(1) If any person violates the provisions of this article, federal or state pretreatment requirements or any order or permit of the city, the director of public works or his designee may make a recommendation to the city attorney to commence an action for appropriate legal and/or equitable relief for such violation of the ordinance, the rules, regulations or permits issued thereunder, federal or state pretreatment requirements.

(2) If an industrial user bans the city from access to pretreatment or sampling facilities, the city has the authority to seek an injunction against the industrial user.

(d) Civil penalties. Any user who fails to comply with any provisions of this article and the orders, rules, regulations and permits issued hereunder shall be fined through a civil action in the courts of the commonwealth not less than ~~one hundred dollars (\$100.00)~~ one thousand dollars (\$1,000) nor more than ~~one thousand dollars (\$1,000.00)~~ two thousand five hundred dollars (\$2,500) for each offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated this ordinance or the orders, rules, regulations and permits issued hereunder.

(e) Criminal penalties. Any user who is found in a court of the commonwealth to have willfully or negligently violated an order of the city or to have willfully or negligently failed to comply with any provision of the article and the orders, rules, regulations and permits issued hereunder shall be guilty of a class 2 misdemeanor.

2. That this ordinance shall become effective on its adoption.

Adopted:

Certified:

Clerk of Council

056L